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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 'TWO

MOHAMMED DANESH-BAHREINI et al., Plaintiffs and Appellants, v. JP MORGAN CHASE, N.A., et al, Defendants and Respondents.	A135236 (Contra Costa County Super. Ct. No. MSC11-00398)

Mohammed Danesh-Bahreini and Shahnaz Danesh sought to prevent nonjudicial foreclosure proceedings instituted by their lender after they defaulted on their mortgage. They appeal from the judgment of dismissal entered after the trial court sustained a demurrer to their complaint. The heart of appellants' action is a claim that the legal notices respondents recorded to initiate foreclosure proceedings were void due to respondents' failure to comply with obligations imposed by statutes the Legislature enacted with the intention of encouraging lenders to negotiate loan modification and workout plans rather than foreclosing on borrower's residences. For the reasons explained herein, we affirm the trial court's decision.

STATEMENT OF THE CASE AND FACTS[1]

On May 21, 2007, appellants obtained a $900,000 loan from Washington Mutual Bank, secured by the property at 2163 Longleaf Circle in San Ramon. The deed of trust names California Reconveyance Company as Trustee. Chase took over Washington Mutual in 2008, assuming its interest in appellants' mortgage.

According to the allegations of the complaint, appellants made their mortgage payments for approximately three years, despite experiencing "financial difficulties." A "significant problem commenced with the downturn in the economy, commencing in 2008," and Danesh's private business selling cars went out of business in 2010.

Appellants alleged that in 2009, knowing they were experiencing financial difficulties, Danesh contacted Chase "seeking a loan modification or workout plan which would enable them to remain in their home while insuring that the loan would be a performing loan." According to the complaint, they made five attempts to obtain a loan modification and were turned down each time for "a variety of, differing and bogus reasons." As to each of these loan modification requests, appellants alleged that Chase did not discuss appellants' financial condition or explore options to avoid foreclosure, and that Chase did not undertake its actions in good faith.

Specifically, appellants alleged that on April 13, 2009, Chase declined a modification on the basis that appellants had not furnished requested documents, but that this reason was false in that Danesh had faxed the requested documents to Chase. In April 2009, appellants submitted a second loan modification package "through their retained modification specialist," which Chase declined on June 24, claiming its representatives could not read the submitted correspondence. The third attempt was alleged to have been made after appellants secured the assistance of Bay Area Residential,

[1] The facts are taken from the complaint, assuming the truth of the allegations as we are required to do in reviewing the trial court's decision on a demurrer.

under the direction of which Danesh faxed to the number Chase provided hundreds of pages of documents that Chase had requested. Danesh called the Chase representative handling this third loan modification request, Robert Dejpour, but was unable to reach him and instead was passed among people claiming to have no information about the loan modification and documents appellants had sent. One of these representatives told Danesh he could see from computer entries that documents had been furnished but were no longer available; he told Danesh to reapply since the loan modification request was being turned down because Chase did not have the necessary documents.

The complaint alleged that during 2009, Danesh had a telephone conversation with Chase representative Judy Park, who told him that the only way appellants would be considered for a loan modification was "to become delinquent in their mortgage payments." Appellants alleged that, relying upon this advice, they stopped making their monthly mortgage payments in 2010, believing "as communicated by Judy Park, that this would qualify them for loan modification consideration and discussions."

Next, appellants alleged, they went to the Chase Loan Modification Center in Santa Clara on April 24, 2010, and Danesh gave "required documents" to Chase representative Sherryl Barcelona. Appellants subsequently gave Barcelona a profit and loss statement she requested. In June 2010, a Chase representative "curtly" told Danesh the loan modification had been turned down and refused to explain why or engage in any discussion with appellants.

Appellants' fifth attempt, they alleged, occurred on July 23, 2010, when they returned to the Loan Modification Center and Danesh gave Barcelona "documents and a hardship letter." He later faxed her an updated profit and loss statement. The loan modification was turned down "almost immediately," in August, and neither the representative who informed appellants of the denial nor Barcelona provided appellants with any explanation.

Foreclosure proceedings were initiated with California Reconveyance Company's November 2, 2010 recording of a Notice of Default and Election to Sell Under Deed of Trust, and its February 3, 2011 recording of a Notice of Trustee's Sale to be held on February 24, 2011. On February 22, 2011, appellants filed their complaint, alleging causes of action for violation of Civil Code sections 2923.5, 2923.6, and 2924c,[2] declaratory relief, fraud, unfair business practices, promissory estoppel, and seeking to enjoin the foreclosure sale. Attached as exhibits to the complaint were the Notice of Default, Notice of Trustee's Sale, Proposed Modification Letter dated February 9, 2011, and a copy of California Senate Bill No. 1137, by which section 2923.5 was originally enacted in 2008.[3] The complaint alleged that Chase commenced nonjudicial foreclosure despite its failure to comply with section 2923.5 and that the declarations stating that Chase had complied with this statute were false. Appellants alleged that the amount of unpaid balance and other charges stated on the Notice of Trustee Sale recorded by Recon, $999,255.10, was nearly $100,000 above the principal of the 2007 loan and did not accurately reflect the $4,575 monthly mortgage appellants had paid for three years; that the reasonable market value of their home, considering the decline in property values since 2007 and structural problems caused by construction defects, was no more than $750,000; and that they had offered, and were prepared to tender, a loan modification and workout plan that would provide Chase a net yield of $1,331,440.

The trial court issued an order to show cause and temporary restraining order pending a hearing on a preliminary injunction. After a hearing on May 26, appellants' application for a preliminary injunction was denied by order filed on June 22, 2011.

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[2] All statutory references are to the Civil Code unless otherwise indicated.

[3] Appellants subsequently filed two amendments to the complaint, one revising the caption and the other correcting an erroneously worded sentence that appeared in several places in the complaint.

Respondents demurred to the complaint on May 27, 2011. On October 27, the trial court sustained the demurrer without leave to amend as to the first and second causes of action (under section 2923.5 and 2923.6), and sustained the demurrer with leave to amend as to the other causes of action. Appellants moved to vacate this order pursuant to Code of Civil Procedure 473, subdivision (b), on the ground that appellants' attorney had failed to appear at the October 27 hearing to contest the tentative ruling issued the previous day because he miscalendared the date of the hearing, which had previously been continued twice. The court issued a tentative decision denying the motion to vacate at that time, but setting a hearing on February 23, 2012 for oral argument concerning the tentative decision on the demurrer. After the February 23 hearing, the court determined that the October 27, 2011 order was correct and denied the motion to vacate. Appellants' attorney had stipulated at the hearing that if the court did not vacate its prior ruling and grant leave to amend the first and second causes of action, appellants would elect not to amend the remaining causes of action. Accordingly, the court found that all causes of action had been finally disposed of and ordered the entire action dismissed with prejudice. The court's judgment of dismissal was filed on March 5, 2012.

Appellants filed a timely notice of appeal on April 18, 2012.

DISCUSSION

"In reviewing an order sustaining a demurrer, ' "we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose. [Citations.]" (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.)' " (*Skov v. U.S. Bank National Assn.* (2012) 207 Cal.App.4th 690, 695 (*Skov*).) " ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its

parts in their context. [Citation.]' " (*Adelman v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 352, 359, quoting *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.)

I.

The trial court sustained the demurrers to appellants' first and second causes of action—for violation of sections 2923.5 and 2923.6—without leave to amend. When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 781; *Cooper v. Leslie Salt Co*. (1969) 70 Cal.2d 627, 636.) The burden of proving such reasonable possibility is squarely on the plaintiff. (*Cooper v. Leslie Salt Co*., *supra*, at p. 636.)" (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318; *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1091.)

The first cause of action alleged that respondents violated the requirement of section 2923.5, subdivision (a)(2), that "a mortgagee, trustee, beneficiary, or authorized agent servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." A notice of default under section 2924 may not be recorded until 30 days after the initial contact required by this subdivision or 30 days after satisfaction of specified due diligence requirements. (§ 2923.5, subd. (a)(1).)[4]

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[4] Section 2923.5 was amended, effective January 1, 2013. As it read at all times pertinent to the present action, section 2923.5 provided in relevant part:

"(a)(1) A mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to Section 2924 until 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g).

"(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to

In sustaining the demurrer to this cause of action, the court stated that the private right of action created by section 2923.5 is "very limited." Relying upon *Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, the court explained that a plaintiff may seek a preliminary injunction only as necessary to allow for the "narrowly construed 'assessment' and 'exploration' contemplated by the statute"; that the lender has no duty to become a loan counselor; and that the lender is required to wait only 30 days after the " 'initial contact'" with the borrower before filing a notice of default. The court found that appellants' allegations "describe multiple contacts between borrower and lender, from April 2009 through August 2010," including submission of five applications for, and denials of, loan modification and consisting of telephone conversations, written communications and personal meetings, and that these allegations "demonstrate

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request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically."

"(b) A notice of default filed pursuant to Section 2924 shall include a declaration that the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h).

"(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that either: (1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure. (2) Lists the efforts made, if any, to contact the borrower in the event no contact was made." (2012 Cal. ALS 87, 2012 Cal. S.B. 900, 2012 Cal. Stats. ch. 87.)

The 2012 amendment did not alter the requirements that the mortgage servicer contact the borrower to assess financial condition and explore options for avoiding foreclosure, or that no notice of default be recorded until 30 days after the initial contact. (§2923.5, subd. (a).)

defendants' substantial compliance with section 2923.5." "In fact, defendants, by actively entertaining plaintiffs' applications for a loan modification, did more than what was required of them. (See, *Mabry*, *supra*, 185 Cal.App.4th at 232 ['[t]he statute cannot require the lender to consider a whole new loan application'].)"

Mabry explained that a narrow construction of section 2923.5 was required in order to avoid the statute being preempted by federal law. Federal regulations promulgated under the Home Owners' Loan Act (HOLA) (12 U.S.C. § 1464) preempt state laws regarding "[p]rocessing, origination, *servicing*, sale or purchase of, or investment or participation in, mortgages." (*Mabry*, *supra*, 185 Cal.App.4th at pp. 228-230; see, 12 C.F.R. § 560.2(b)(10), italics added.**)** States' "real property law," on the other hand, is not preempted. (*Mabry*, at p. 230 ; see, 12 C.F.R. § 560.2(c)(2).) Since the "*process of foreclosure* has traditionally been a matter of state real property law" (*Mabry*, at p. 230), *Mabry* held that section 2923.5 is not preempted by federal banking regulations—but only because the remedy for noncompliance is limited to postponement of the foreclosure sale (*Mabry*, at p. 214). *Mabry* explained that section 2923.5 "is not preempted by federal banking regulations because it *is*, or can be construed to be, very narrow. . . . [¶] [T]here is no *right*, for example, under the statute, to a loan modification. . . . [T]o the degree that the words 'assess' and 'explore' can be narrowly or expansively construed, they must be narrowly construed in order to avoid crossing the line from state foreclosure law into federally preempted loan servicing. Hence, any "assessment" must necessarily be simple—something on the order of, 'why can't you make your payments?' The statute cannot require the lender to consider a whole new loan application or take detailed loan application information over the phone. (Or, as is unlikely, in person.) (*Mabry*, at pp. 231-232.)

"[T]he same goes for any 'exploration' of options to avoid foreclosure. Exploration must necessarily be limited to merely telling the borrower the traditional

ways that foreclosure can be avoided (e.g., deeds 'in lieu,' workouts, or short sales), as distinct from requiring the lender to engage in a process that would be functionally indistinguishable from taking a loan application in the first place. In this regard, we note that section 2923.5, subdivision (a)(2) directs lenders to *refer* the borrower to 'the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency.' The obvious implication of the statute's referral clause is that the lender itself does not have any duty to become a loan counselor." (*Mabry*, at p. 232.)[5]

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[5] Federal district courts are divided on whether section 2923.5 is preempted by federal law governing federal savings associations (HOLA) and federally chartered banks (National Bank Act (NBA), 12 U.S.C. § 21 et seq.). (E.g., *Nguyen v. JP Morgan Chase Bank, N.A.* (N.D. Cal. May 15, 2013) 2013 U.S. Dist. LEXIS 69362, 21-23 ["An overwhelming number of federal courts have specifically found that Section 2923.5 is preempted by HOLA because allegations relating to foreclosure 'fall within § 560.2(b)(10)—that is, the "[p]rocessing, origination, servicing, sale or purchase of, or investment or participation in, mortgages**" ' "];** *Williams v. Wells Fargo Bank, NA* (C.D. Cal. May 13, 2013) 2013 U.S. Dist. LEXIS 68615, 8-9 [as "state law that attempts to regulate savings banks and their lending and servicing activities," § 2923.5 "is exactly the sort of statute that is proscribed by the HOLA"]; *Pinales v. Quality Loan Serv. Corp.* (S.D. Cal. Sept. 22, 2010) 2010 U.S. Dist. LEXIS 100079, 8-9 [requirements of section 2923.5 "fall squarely within" federal regulation preempting state laws dealing with '[p]rocessing, origination, servicing, sale or purchase of, or investment or participation in, mortgages' "]; *Parcray v. Shea Mortg., Inc.* (E.D. Cal., April 23, 2010) 2010 U.S. Dist. LEXIS 40377, 24 [HOLA preempts claim for violation of section 2923.5 because claim "concerns the processing and servicing of Plaintiffs' mortgage"]; *Maynard v. Wells Fargo Bank, N.A.* (S.D. Cal. Oct. 12, 2012) 2012 U.S. Dist. LEXIS 148163 [§ 2923.5 preempted by NBA, which regulates national banks in manner substantially the same as regulation of federal savings associations under HOLA]; *Acosta v. Wells Fargo Bank, N.A.* (N.D. Cal. May 21, 2010) 2010 U.S. Dist. LEXIS 50602, 25 [same**];** C*ontra, Quintero v. Wells Fargo Bank, N.A.* (N.D. Cal. Jan. 17, 2014) 2014 U.S. Dist. LEXIS 6807, 7, 11 [nonjudicial foreclosure procedures not preempted under HOLA]); *Osorio v. Wells Fargo Bank, N.A.* (N.D. Cal. May 24, 2012) 2012 U.S. Dist. LEXIS 72719, 6 [same]; *Sannah v. Wells Fargo Bank, N.A.* (C.D. Cal. March 19, 2012) 2012 U.S. Dist. LEXIS 189872, 15 [no preemption under NBA].)

"[G]iven that section 2923.5 does not require the lender to modify the loan and a lender's failure to comply with the statute is limited to providing borrowers with more time, it only incidentally affects the lending operations of a bank." (*Skov, supra,* 207 Cal.App.4th at pp. 702-703.)[6] A broader interpretation of the rights and remedies provided by section 2923.5 would necessarily result in a conclusion that the statute was preempted.

In the present case, as the trial court found, the complaint alleges numerous contacts between appellants and bank representatives, including both telephone calls and in-person conversations. Appellants allege that they submitted loan modification applications, were told what documents to provide and provided them, and received notice of respondents' action denying the applications. Such contacts satisfy section 2923.5. (*Davenport v. Litton Loan Servicing, LP* (N.D.Cal. 2010) 725 F.Supp.2d 862, 877 [complaint alleged borrower discussed modification with lender, lender rejected]; *Brown v. U.S. Bancorp* (C.D. Cal. Feb. 27, 2012) 2012 U.S. Dist. LEXIS 26226, 18-19 [pleadings admitted discussion of loan modification].) "The statute merely 'contemplates contact and some analysis of the borrower's financial situation.' " (*Mosarah v. Sun Trust Mortg.* (E.D. Cal. June 7, 2012) 2012 U.S. Dist. LEXIS 80656, 27-28, quoting *Davenport, supra,* 725 F.Supp.2d at p. 877.)

Here, appellants' complaint acknowledges contacts with respondents concerning their loan applications by alleging that respondents' actions were a sham in that it never intended to modify, or consider modifying, the loan. But to look behind the acknowledged contacts in order to determine what degree or kind of consideration was in

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We are not bound by decisions of lower federal courts interpreting federal law. (*Skov v. U.S. Bank National Assn.* (2012) 207 Cal.App.4th 690, 703, fn. 9.)

[6] *Skov* found *Mabry*'s reasoning equally applicable to lenders regulated under the NBA rather than HOLA. (207 Cal.App.4th at p. 702.)

fact given to modifying the loan would be to cross the line from procedural step in a foreclosure action—permitted under *Mabry*'s analysis—to preempted loan servicing. If appellants are entitled to pursue relief against respondents for not properly considering their applications for loan modification, it must be in some other form than for violation of section 2923.5.

Appellants take issue with the trial court's additional finding that requiring "new pro forma compliance with statutory procedures" would serve no meaningful purpose because appellants had been represented by counsel since at least February 2011, and had obtained an eight-month postponement of the trustee's sale, which gave them "yet more time to negotiate with defendants, or to explore other options to avoid foreclosure, in the manner contemplated by section 2923.5"; and that their attorney had sent respondents a formal refinancing proposal. Appellants see the court's findings as relieving a lender from the obligation to comply with section 2923.5 in any case where the homeowner is represented by counsel. We disagree. The court was merely stating that in this case, where there had been substantial contact between the parties and the foreclosure had already been postponed for a lengthy period, in which appellants had the benefit of legal representation, there was no further meaningful relief to be gained under section 2923.5.

Appellants also argue that the trial court improperly concluded that appellants made a judicial admission that Chase had fully complied with section 2923.5 in the statement in counsel's letter to Chase that "Chase appears to have complied with the requirements of 2923.5 in form but not in substance." The court stated, "Plaintiffs assume, and ask the Court to assume, that section 2923.5 imposes on lenders a substantive obligation over and above the statute's technical requirements: specifically, an obligation to negotiate with a borrower until a refinancing of the loan obligation that is satisfactory to the borrower has been achieved. The *Mabry* decision, cited above, makes

clear that the statute imposes no such substantive obligation. If a lender has complied with section 2923.5 'in form,' it has complied with section 2923.5 in full."

The court's interpretation of appellant's "admission" is supported by the context in which the quoted sentence from counsel's letter appeared, which followed a description of contacts between the parties: "[Appellants] then commenced a futile loan modification process a total of five different times, being turned down each time for a variety of, and differing, reasons. . . . While loan modification activity occurred, one has to question the good faith of this activity." Counsel's letter acknowledged that respondents engaged in "loan modification activity," but appears to challenge the good faith of that activity because the applications were turned down. In any event, we need not further consider appellants' challenge to the court's reliance upon a judicial admission, as the court expressly stated that its decision was based not on this ground but on "defendant's *substantial* compliance with the statutory requirements."

Appellant's second cause of action was based on section 2923.6. At all times relevant to this action, section 2923.6, subdivision (a), provided: "The Legislature finds and declares that any duty servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a [pooling] and servicing agreement, and that a servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply: [¶] (1) The loan is in payment default, or payment default is reasonably foreseeable. [¶] Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis." Section 2923.6 further stated, "It is the intent of the Legislature that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if

such a modification or plan is consistent with its contractual or other authority." (§ 2923.6, subd. (b).)[7]

As the trial court recognized, section 2923.6 "does not operate substantively," but "merely expresses the *hope* that lenders will offer loan modifications on certain terms." (*Mabry, supra,* 185 Cal.App.4th at p. 222.) Appellants concede that any violation of section 2923.6 does not support an independent cause of action.

The demurrers to the first and second causes of action were properly sustained.

II.

The trial court sustained the demurrers to the third through seventh causes of action *with* leave to amend. Appellants, however, elected not to amend the complaint. " 'It is the rule that when a plaintiff is given the opportunity to amend his complaint and elects not to do so, strict construction of the complaint is required and it must be presumed that the plaintiff has stated as strong a case as he can.' (*Gonzales v. State of California* (1977) 68 Cal.App.3d 621, 635; see also *Chicago Title Ins. Co. v. Great Western Financial Corp.* (1968) 69 Cal.2d 305, 312 [the plaintiff's failure to amend 'constrained [us] to determine only whether appellants state a cause of action, not whether they might have been able to do so'].)" (*Reynolds v. Bement, supra,* 36 Cal.4th at p. 1091.) In this situation, " 'the judgment of dismissal must be affirmed if the unlamented complaint is objectionable on any ground raised by the demurrer. (*Gonzales*

[7] Section 2923.6 was amended, effective January 1, 2013, to make slight changes to subdivisions (a) and (b) that do not alter the substance of the provisions, and to add requirements including that a lender not record a notice of default or notice of sale, or conduct a trustee's sale, until the mortgage servicer makes a written determination that the borrower is not eligible for a first lien modification and a specified appeal period has expired, the borrower does not accept an offered modification, or the borrower defaults on a modification; and that the mortgage servicer provide the borrower with a written notice identifying the reasons for denial. (§2923.6, subds. (c), (d), (e), (f); Stats. 2012, ch. 86, § 7 (S.B. 900), eff. January 1, 2013, repealed January 1, 2018.) These new requirements are not applicable to the present case.

v. State of California[, *supra*,] 68 Cal.App.3d [at p.] 635 . . .; *Totem v. Underwriters at Lloyd's London* (1959) 176 Cal.App.2d 440, 442, 447-448 . . . .)' (*Otworth v. Southern Pac. Transportation Co*. (1985) 166 Cal. App. 3d 452, 457.)" (*Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585.)

Appellants' counsel explained in the trial court the reason for declining to amend the complaint: In responding to the court's tentative decision, counsel stated that if the court maintained its ruling concerning the first and second causes of action, precluding reference to sections 2923.5 and 2923.6, appellants would not be able to state the other causes of action. Counsel explained, "shake this case however you want, it really comes down to 2923.5. I mean, that's kind of like the central point of this action. . . . If I were to amend those other causes of action in conformity with the court's ruling I'm basically losing 2923.5, which is the core cause of action of my pleadings, and quite frankly I think I would be subjected to yet a second demur, and rightly so." Appellants' opening brief on appeal confirms that "[a] violation of California Civil Code [section] 2923.5 is at the center of all of Appellants' causes of action."

Third Cause of Action: Statutory Violations—Fees and Charges

The complaint alleged that the $999,255.10 demanded in the Notice of Trustee Sale was almost $100,000 above the principal of the loan extended to appellants in 2007 and was "grossly excessive and inaccurate"; that the permissible arrears and fees due should be no more than $55,935 (including $4,110 in attorney/trustee fees for the foreclosure sale under section 2924d, subdivision (a), reasonable publication fees of no more than $1,500, and 10 percent monthly late fees totaling $4,575), and that respondents willfully, intentionally and knowingly demanded an amount inflated by $44,035; and that the Notice of Default violated section 2924c, subdivision (b)(1), by imposing unjustified, fraudulent and excessive fees in the amount of $36,580.75. Appellants alleged that the excessive charges in the Notice of Default rendered that notice invalid and void.

The trial court granted the demurrer to this cause of action for three reasons. First, assuming there was a separate statutory cause of action for violation of the statutes appellants relied upon, the court found the allegations lacked the required degree of particularity for statutory causes of action in that appellants failed to show "what specific charges, in what specific amounts, were miscalculated or were otherwise excessive." Second, the court found that appellants failed to allege facts showing how the claimed violations could have caused them prejudice: Since they alleged the residence was worth no more than $750,000, the court questioned how it could benefit appellants if the notice of trustee's sale stated the delinquent loan balance as $956,000 (using the numbers alleged in the complaint) instead of $999,000, as "no rational buyer would purchase the residence at a trustee's sale for $206,000 more than the residence was worth." Third, the court held appellants failed to allege that they tendered the amounts secured by the deed of trust or to show an equitable basis for declining to apply the rule requiring such a tender.

Appellants argue that the trial court utilized an incorrect standard for the particularity required in a complaint—that the allegations need only give sufficient facts to inform the defendant of the basis upon which relief is sought, "modern discovery procedures" make specificity in pleading unnecessary, and less particularity is needed where the defendant can be assumed to have knowledge of the facts equal to the plaintiff's.

The trial court did not employ an improper standard. In general, " 'a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action. [Citation.]' " (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608, quoting *Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.) But there are "certain suits in which pleading with particularity is required,

such as suits claiming fraud (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 216) *or, as a rule, asserting statutory causes of action* (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal. 3d 780, 795)." (*Bockrath v. Aldrich Chemical Co.* (1999) 21 Cal.4th 71, 78, italics added.) The trial court applied this rule to appellants' cause of action for statutory violations.[8]

Appellants cite three statutes in this cause of action: sections 2924d, subdivision (a), 2924f, subdivision (b)(1), and 2924c, subdivision (b)(1). Section 2924d, subdivision (a), enumerates the costs and expenses incurred in enforcing a mortgage obligation. As indicated above, appellants specify certain fees they allege would be permitted under section 2924d, subdivision (a) —a total of $10,185— then state that the "grand total of arrears and fees should be no more than $55,935." Subtracting $10,185 from $55,935, it appears that appellants acknowledge arrears of $45,750. The allegations of the complaint do not explain how this figure was determined or why this figure, rather than that stated in the Notice of Trustee Sale, is correct.

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[8] Appellants attempt to avoid the rule requiring particularity in pleading stated in *Lopez, supra,* 40 Cal.3d at page 785, by arguing that *Lopez* was decided before the enactment of the Civil Discovery Act of 1986, subsequent enactment of a new Civil Discovery Act in 2005, and "cases which now hold that there is no longer need to require specificity in the pleadings because [of] modern discovery procedures." *Ludgate Insurance Co., supra,* 82 Cal.App.4th at page 608, the first of the cases appellant relies upon, in stating that "[t]here is no need to require specificity in the pleadings because 'modern discovery procedures necessarily affect the amount of detail that should be required in a pleading,' " quoted *Semole v. Sansoucie, supra,* 28 Cal.App.3d 714, 719, a case predating *Lopez*; *Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, cited *Ludgate Insurance Co.* for this point. The "fair-notice" pleading test (*Ludgate Insurance Co., supra,* 82 Cal.App.4th at p. 608) and recognition of the role of discovery procedures in reducing the need for specificity in pleading long predated the statutes appellants suggest altered the pleading requirements for statutory causes of action. As stated in the text, certain causes of action simply require greater particularity in pleading than others. (*Bockrath .v Aldrich Chemical Co., supra,* 21 Cal.4th at p. 78.)

Section 2924f, subdivision (b)(1), states requirements for time and place of publicly posting the notice of sale. Appellants apparently intended to allege a violation of section 2924f, subdivision (b)(7), which requires that the notice of sale contain a statement of the total amount of the unpaid balance and reasonably estimated costs and expenses. Presumably, appellants' cause of action claims violation of this statute due to the alleged miscalculations or excessive charges just described.

Section 2924c, subdivision (b)(1), concerns the Notice of Default, which must state the amount the borrower must pay to bring the account current. Appellants allege violation of this statute in that the Notice of Default imposed "these excessive fees and charges in the amount of $36,580.75." The complaint alleges no facts explaining how this figure is excessive or what the correct amount of default should have been. The Notice of Default stated the amount of arrears appellants would have to pay to bring their account current. Appellants do not allege that this amount was incorrectly calculated, that is, that they in fact owed some different amount.

In short, while the complaint provided respondents with notice that appellants believed the amounts stated in the Notice of Default and Notice of Trustee's Sale were "excessive," "unjustified" and "fraudulent," the allegations fail to provide a factual basis for these conclusions. The trial court gave appellants leave to amend the complaint, but appellants declined to do so.[9]

Fourth Cause of Action—Declaratory Relief

In their fourth cause of action, appellants asked the court to issue a declaratory judgment finding that respondents' violations of sections 2923.5, 2923.6, 2924c and 2924f rendered the Notice of Default and Notice of Trustee Sale void. The trial court found the request for declaratory relief regarding the alleged violations of sections 2923.5

[9] Given this conclusion, we need not resolve appellants' challenges to the trial court's other reasons for sustaining the demurrer to this cause of action.

and 2923.6 moot in light of its rulings on the first and second causes of action, and the request for declaratory relief superfluous as to the claimed violations of sections 2924c and 2924f, which were the subject of the third cause of action.

Code of Civil Procedure section 1060 provides: "Any person interested under a written instrument . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought."

Appellant stresses that Code of Civil Procedure section 1060 permits a plaintiff to seek declaratory relief "alone or with other relief." But the statute provides that the court "may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances." " 'The object of the [declaratory relief] statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues.' (*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470.) 'Under section 1061 of the Code of Civil Procedure the court may refuse to exercise the power to grant declaratory relief where such relief is not necessary or proper at the time under all of the circumstances. The availability of another

form of relief that is adequate will usually justify refusal to grant declaratory relief. The refusal to exercise the power is within the court's legal discretion and will not be disturbed on appeal except for abuse of discretion. (*Girard v. Miller* [1963] 214 Cal.App.2d 266, 277. . . .)' (*General of America Ins. Co. v. Lilly*, at p. 471; see also *State Farm etc. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428, 433.)" (*Cal. Ins. Guarantee Assn v. Superior Court* (1991) 231 Cal.App.3d 1617, 1623-1624; *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324.)

Here, the cause of action for declaratory relief sought nothing that could not be resolved through the other causes of action. Appellants sought a declaration that respondents had violated sections 2923.5 and 2923.6; the court determined in its ruling on the first two causes of action that appellants were not entitled to relief under these statutes. Appellants sought a declaration that respondents had violated sections 2924c, subdivision (b)(1) and 2924f, subdivision (b)(1), in the manner claimed in the third cause of action; the court's ruling on that cause of action fully resolved this point. The relief appellants sought in the cause of action for declaratory relief—a declaration that the Notice of Default and Notice of Trustee Sale were void—was identical to that sought in the first three causes of action. The trial court did not abuse its discretion in finding the declaratory relief cause of action moot as to the claimed violations of sections 2923.5 and 2923.6 and superfluous as to the other claimed violations.

Fifth Cause of Action—Fraud

Appellants alleged that they relied upon several false statements made by respondents. First, respondents allegedly promised to evaluate a loan modification and workout plan if appellants submitted the documents respondents requested; appellants relied upon this promise and submitted loan modification documents on five different occasions, spending over 200 hours gathering and submitting the documents. Second, appellants alleged that they relied upon the advice of Judy Park by ceasing their mortgage

payments as Park indicated was necessary to fulfill Chase's loan modification criteria, and were injured by Park's "bad, and false, advice" in that appellants' reliance gave respondents the legal right to foreclose upon appellants' residence. Appellants alleged that they would not have stopped making mortgage payments if they had known of the harm doing so would cause and if they had known the advice was given for the purpose of providing respondents with the legal right to foreclose.

The trial court found that appellants failed to plead false representation fraud with adequate particularity. Specifically, the court stated that appellants failed to clearly allege "in what respect" Park's advice was false, and that the court was "concerned" with the elements of justifiable reliance and causation. If appellants had the economic resources to make their monthly payments, the court stated, it was "not clear" why they did not cure their default once it became apparent that the parties would not be able to negotiate a refinancing of the loan; if they did not have the resources to make timely payments, "it would appear that the impending loss of [appellants'] residence through foreclosure is being caused by the failure of [Danesh-Bahreini's] business . . . and not by [respondents'] conduct." The court stated that appellants had not alleged how, given the loss of "what was apparently their only source of income," appellants would be able to "make any monthly payment that a reasonable lender might find acceptable, in addition to paying property taxes, insurance, and the other equally necessary expenses of home ownership.")

To the extent appellants were relying upon false promise fraud, the court found they failed to adequately allege the terms of the false promise and "facts that would 'show' or 'backup' [appellants'] implied allegation that [respondents] did not intend to perform the promise when that promise was given." The court stated that if appellants continued to pursue a fraud theory in an amended complaint, they "shall allege separate causes of action for false representation fraud and false promise fraud" and "omit any

references to violations of sections 2923.5 and 2023.6" as "such references could only confuse, and not clarify, the nature of [appellants'] fraud theory."

"The elements of fraud or deceit (see Civ. Code, §§ 1709, 1710) are: a representation, usually of fact, which is false, knowledge of its falsity, intent to defraud, justifiable reliance upon the misrepresentation, and damage resulting from that justifiable reliance." (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 72-73.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) " 'Every element of the cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.' (*Roberts v. Ball, Hunt, Hart, Brown & Baerwitz* (1976) 57 Cal.App.3d 104, 109; *Committee on Children's Television, Inc. v. General Foods Corp*.[, *supra*,] 35 Cal.3d [at pp.] 216-217; *Stansfield v. Starkey*[, *supra*,] 220 Cal.App.3d [at p.] 73.)" (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

Appellants insist that they pled the "who, what, when and where" the court found lacking, by alleging that Park told them they would not meet Chase's loan modification unless they were in default, that they followed Park's advice and became delinquent when they had previously been current in their payments, and that Chase "continued to shred and lose and ignore" appellants' remaining two loan modification applications. Appellants argue that the "falsity of Ms. Park's recommendations could not be more obvious. Ms. Park said do A to get B. The Appellants did A and nothing beyond a notice of trustee sale."

The complaint contains no elaboration or explanation of the conclusory allegation that Ms. Park's advice was "false." Appellants alleged that Park told them that the "only way [they] would be considered for a loan modification was to become delinquent in their mortgage payments"; that they "stopped making mortgage payments in order to

furnish credibility and help establish hardship to their request for a loan modification"; that Park "had indicated that this was necessary in order to fall in to the criteria and pattern required for Chase loan modifications"; and that this "advice" was "bad" and "false." Was the alleged falsity that Chase would have considered a loan application without appellants' payments being delinquent? Was the statement true in and of itself, but made with knowledge that Chase would not consider this particular application even if appellants defaulted on their payments? Notably, appellants did not allege that Park told them to stop making their mortgage payments or that Park promised their applications would be considered if they went into default.

As for the allegations that Chase falsely promised to consider a loan modification if appellants provided the documents Chase requested, appellants did not sufficiently plead facts showing their loan applications were not considered. The complaint alleged that respondents did not discuss appellants' financial condition or explore options to avoid foreclosure with them, did not act in good faith, and denied their applications without explanation. The allegations expressly tie the fraud claim to the alleged violations of sections 2923.5, 2923.6, 2924c and 2923f, stating that respondents "demonstrated their fraud" by their violations of these statutes. As we have explained, the trial court correctly concluded that appellants' allegations negated a cause of action for violation of section 2923.5, and failed to sufficiently allege violations of sections 2924c and 2924f. To the extent appellants claim Chase falsely represented it would consider their applications independently of the requirements of section 2923.5, their allegations do not support the necessary inference that the applications in fact were not considered. Absent a duty to provide an explanation for the denial of the applications, which appellants have not alleged, the allegations that appellants submitted applications for loan modification and their applications were denied without explanation fails to support an inference that the applications were not considered at all. Further, appellants

alleged no facts supporting their implied allegation that respondents did not intend to perform the promise to consider their application when that promise was made. The trial court gave appellants the opportunity to allege fraud independent of the statutory violations the present complaint was built around, but they chose not to amend the complaint, telling the trial court they could not state the cause of action without reference to the statutory claims.[10]

Sixth Cause of Action—Unfair Business Practices

Appellants' sixth cause of action alleged that respondents violated the Business and Professions Code sections 17200 et seq. (the Unfair Competition Law or UCL) by the same false promises and misrepresentations alleged in the fraud cause of action and by their violations of sections 2923.5, 2923.6, 2924c and 2924f. They additionally alleged that respondents committed an unfair business practice by filing a false document as part of the recording of the Notice of Default, in violation of Penal Code sections 115, subdivision (a) [offering a false instrument for recording], and 115.5, subdivision (a) [filing a false document affecting real property]—the declaration stating that respondents had complied with section 2923.5. Appellants further alleged that respondents falsely published in the Notice of Default that appellants were in arrears $36,580.75 and in the Notice of Trustee Sale that appellants owed $999,255.10. Appellants alleged that as a result of respondents' willful and intentional bad acts, they suffered the loss of mortgage payments exceeding the reasonable rental value of their residence, attorney fees incurred in vindicating their rights, an adverse credit rating, and that they would not have entered any loan agreement with respondents if they had known respondents would engage in these acts.

[10] Given our conclusion that the allegations of the complaint were insufficient for the reasons stated above, we need not address the trial court's additional reasons for sustaining the demurrer.

The trial court sustained the demurrer for two independent reasons. First, the court held appellants failed to adequately allege facts showing an illegal business practice for the reasons stated in its ruling on the demurrers to the first through third causes of action; failed to allege a fraudulent business practice for the reasons stated in its ruling on the fifth cause of action; and failed to adequately allege an unfair business practice "as that term is specially defined for purposes of this cause of action," citing *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 838-839 (*Daugherty*).) Second, the court held that appellants failed to allege facts showing they had a right to the limited forms of equitable relief (restitution and injunctive relief) available in an action under the Unfair Competition Law and that the right to such equitable relief appeared to be barred by appellants' failure to tender the amount due on their loan.

"Conduct violating the UCL includes "any unlawful, unfair or fraudulent business act or practice . . . ." (Bus. & Prof. Code, § 17200.) By proscribing unlawful business practices, the UCL borrows violations of other laws and treats them as independently actionable. In addition, practices may be deemed unfair or deceptive even if not proscribed by some other law. Thus, there are three varieties of unfair competition: practices which are unlawful, unfair or fraudulent. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co*. (1999) 20 Cal.4th 163, 180 (*Cel-Tech*).)" (*Daugherty, supra,* 144 Cal.App.4th at p. 837.)

The Courts of Appeal have formulated several different tests for what constitutes an unfair business practice. (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 907 (*Jolley*); *Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1260-1261.) "Some cases hold an 'unfair' practice is one that offends established public policy, that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, or that has an impact on the victim that outweighs the defendant's reasons, justifications, and motives for the practice. (*Pastoria v.*

Nationwide Ins. (2003) 112 Cal.App.4th 1490, 1498; *Smith v. State Farm Mutual Automobile Ins. Co*. (2001) 93 Cal.App.4th 700, 718-719; *Podolsky v. First Healthcare Corp*. (1996) 50 Cal.App.4th 632, 647.) Others, including at least one from our district (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 853-854), hold that the public policy which is a predicate to a claim under the 'unfair' prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions. (See *Scripps Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 938.)" (*Jolley, supra,* 213 Cal.App.4th at p. 907.)

A "fraudulent" business practice under the UCL need not necessarily satisfy the requirements of common law fraud. "Unlike common law fraud, a Business and Professions Code section 17200 violation can be shown even without allegations of actual deception, reasonable reliance and damage. Historically, the term 'fraudulent,' as used in the UCL, has required only a showing that members of the public are likely to be deceived. (*Committee on Children's Television, Inc. v. General Foods Corp.*[, *supra*,] (1983) 35 Cal.3d 197, 211.)" (*Daugherty, supra*, 144 Cal.App.4th at p. 838.) " 'The determination as to whether a business practice is deceptive is based on the likely effect such [a] practice would have on a reasonable consumer.' " (*Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1256-1257, quoting *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471.)

Appellants challenge the trial court's reliance upon its rulings on the preceding causes of action in sustaining the demurrer to the unfair business practices claim. To the extent appellants claimed *unlawful* business practices on the basis of violations of sections 2923.5, 2923.6, 2924c and 2924f, the trial court correctly determined that their allegations were insufficient for the reasons stated in connection with its ruling on the first through third causes of action: Having failed to allege a violation of these statutes, appellants necessarily failed to allege an unlawful business practice based on such

violations. The trial court's ruling on the first cause of action also precluded appellants' attempt to allege an unlawful business practice based on the declaration of compliance filed with the Notice of Default. As the allegations of the complaint negated a violation of section 2923.5, they also negated a claim that this document falsely stated respondents complied with the statute.

To the extent appellants claimed these statutory violations established *unfair* business practices, they failed to allege how the practices were unfair independent of the alleged statutory violations. Appellants argue that respondents promised to evaluate a loan modification and workout plan if appellants submitted the requested documents, but then "ignored" the documents. However, as we have discussed, the complaint's allegations do not support the inference that the applications were ignored, only that they were denied. Appellants argue that although section 2923.6 does not support a direct right of action, violation of this statute can be the basis of an unfair business practice. Section 2923.6 states the Legislature's hope that lenders will implement loan modification or workout plans, particularly noting the situation where anticipated recovery under the loan modification plan would exceed anticipated recovery through foreclosure. It does not impose any obligation to implement a loan modification.[11]

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[11] Appellants rely upon *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592 (*Lu*) to argue that the "violation of a law which 'does not operate substantively' and which 'expresses a hope' " can be an unfair business practice. The statute at issue in *Lu*, Labor Code section 351, provides that gratuities are the sole property of the employee to whom they are given and cannot be taken by the employer. In a case raising the question whether employer-mandated tip pooling violates this law, *Lu* held that Labor Code section 351 does not give employees a private right of action, concluding from the statutory language and legislative history that the statute simply affirmed existing law rather than creating a new statutory remedy. (*Lu*, at p. 601.) Appellants rely upon the fact that the Court of Appeals in *Lu* had held that although section 351 did not provide a private right of action, violation of the statute could still be the basis of a claim under the UCL. Appellants apparently reason that since the Supreme Court did not address that part of the decision, pursuant to its remand, the *Lu* case would be able to proceed on a

Appellants correctly assert that the trial court found their allegations insufficient to state a fraudulent business practice on the basis of its ruling on the fraud cause of action without considering the difference between common law fraud and the showing of fraud required under the UCL. Nevertheless, the court's reasoning is applicable in considering whether appellants alleged facts showing that respondents' conduct would be likely to deceive a reasonable consumer. (*Morgan v. AT&T Wireless Services, Inc., supra,* 177 Cal.App.4th at pp. 1256-1257.) In the context of the fraud cause of action, the court found the allegations insufficient to explain how Park's alleged statement was false or to support the implied allegation that respondents did not intend to fulfill the alleged promise to consider appellants' loan modification. The allegations are similarly insufficient to show how the conduct would be likely to deceive a reasonable consumer. There was no allegation that Park actually directed appellants' to stop making their mortgage payments, just that she told them Chase's policy was to consider loan modification only where the borrower was in default. There was no allegation that Park told appellants they would be able to modify their loan if they went into default. There was no allegation that respondents would have considered their loan modification applications if they had *not* gone into default. Nor were there allegations that the applications were in fact not considered, only that respondents did not engage in the discussions specified in section 2923.5. As we have said, the allegations indicate

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UCL claim premised on violation of Labor Code section 351, and, therefore, that *Lu* stands for the proposition they appellants state. Respondents contest appellants' assertion that the Supreme Court "left in place" the Court of Appeal's holding on the UCL issue.

We need not engage in the parties' dispute about the effect of *Lu*. Contrary to appellants' characterization, the statute at issue in *Lu* was not "aspirational." It clearly prohibited certain conduct; it simply called for enforcement by regulation of the employer rather than suits by employees to recover misappropriated tips. (*Lu, supra,* 50 Cal.4th at pp. 598-601.) Section 2923.6, by contrast, states a legislative "hope." (*Mabry, supra,* 185 Cal.App.4th at p. 222.) *Lu* does not address this situation.

appellants' applications were given *some* consideration—appellants allege they were submitted and denied. In the absence of allegations showing that Park—or respondents generally—made false statements or otherwise falsely led appellants to believe they had to stop making their mortgage payments, appellants failed to allege a business practice that would be likely to deceive a reasonable consumer.

Seventh Cause of Action—Promissory Estoppel

" ' "The elements of a promissory estoppel claim are '(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.' " ' (*Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1672.)" *Aceves v. U.S. Bank N.A.* (2011) 192 Cal.App.4th 218, 225-226.)

The alleged false promises upon which appellants predicated this cause of action are the same as those underlying their other causes of action. They alleged that respondents promised to evaluate a loan modification and workout plan if appellants submit[ing]the requested documents, that they relied upon this promise and submitted the documents five times, "investing over 200 hours in gathering together the necessary documents and submitted them to" respondents, and that their reliance was reasonable and foreseeable in light of the mandates of sections 2923.5 and 2923.6. They further alleged that they relied upon Park's "promise and advice" in that they stopped making mortgage payments in order to establish credibility to their request for a loan modification, which Park had indicated was necessary to fall into the "criteria and pattern required for loan modifications," and were injured in that their reliance gave respondents the legal right to foreclose.

Appellants liken their case to *Aceves v. U.S. Bank NA, supra,* 192 Cal.App.4th 218. There, the plaintiff filed for bankruptcy in order to avoid foreclosure on her home; the

bank promised to negotiate a loan modification plan if the plaintiff would forego bankruptcy proceedings; the plaintiff did not pursue the bankruptcy; and the bank, instead of negotiating a loan modification, completed the foreclosure. (*Id.* at p. 221.) *Aceves* found that the plaintiff stated a cause of action for promissory estoppel: She alleged a clear and unambiguous promise by the bank to negotiate a loan modification, reasonable and foreseeable reliance upon that promise by foregoing bankruptcy proceedings, and detriment in that the plaintiff gave up protections offered by the bankruptcy laws that could have saved her home. (*Id.* at pp. 226-230.)

Appellants' allegations were insufficient to state a cause of action for promissory estoppel for the reasons we have already discussed in connection with other claims. Contrary to the characterization in their appellate briefs, appellants did not allege that Park made any promise or issued any directive to stop paying on their mortgage: They alleged only that she told them they would not be considered for loan modification if they were not in default. Appellants alleged that respondents promised to evaluate a loan modification plan but, as we have said, failed to allege facts showing their applications in fact were not considered.[12]

The judgment is affirmed.[13]

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[12] Sustaining the demurrer to this cause of action, the trial court held that promissory estoppel is not "technically an independent cause of action," but rather "an alternative way to satisfy the 'consideration' element of a standard breach of contract action, and that appellants did not plead the elements of a breach of contract action. We find it unnecessary to comment on the court's reasoning as we have concluded its decision was correct. " '[I]t is axiomatic that we review the trial court's rulings and not its reasoning.' " (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336, quoting *People v. Mason* (1991) 52 Cal.3d 909, 944.)

[13] In addition to its other rulings, the trial court sustained the demurrers as to the foreclosure trustee on the additional ground that appellants failed to allege facts showing why California Reconveyance Company should be held liable for the acts of Chase Bank. In view of our conclusion that the trial court was correct in sustaining the demurrers on

Costs to respondents.

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Kline, P.J.

We concur:

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Haerle, J.

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Richman, J.

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the grounds we have discussed, we need not address this additional basis for sustaining them as to California Reconveyance Company.